

THE MERCER WILL CASE.

Justice Act has been in this respect. The figures show that there has been a large increase of business in 1875 in all the courts; but it would be premature to assert that the effect has been to throw more work into the Common Law Courts from the Court of Chancery. The cause of this greater increase in the Common Law Courts has probably nothing to do with recent legislation as to procedure in the Courts; but we may safely assume, from the figures and from general information, that it has been caused by their jurisdiction having been extended; whilst the other causes mentioned above have operated, not only to supply the deficiency thus arising in Chancery, but to add to the business there.

It may then be noticed that there were, in addition to the cases actually argued at the end of 1875, ninety-one rules ready for hearing in the Queen's Bench, and thirty-nine in the Common Pleas—an increase to the arrears of previous years. These arrears have not of late years accumulated to anything like the same extent in the Court of Chancery, owing, doubtless to the fact that the bulk of the work is there disposed of by Judges sitting singly—a system which is likely to lead to the best results in facilitating business in the Common Law Courts.

None of these returns give any information as to the number of cases heard on circuit or at Assizes in the outer Counties; but, those relating to Toronto are probably representative of that class of business of the country.

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We do not propose to say anything about the main features of this case, which have been sufficiently before the eyes of our readers through the medium of the lay press. But, as in the Tichborne case, many interesting and some

novel questions are connected with the trial, directly or collaterally, and to them it may not be inadvisable to call attention.

(1.) It appeared in the evidence that young Mercer had given a bond for \$30,000 to one of the witnesses, which was to be his reward in the event of success. This class of evidence is admissible for the obvious reason that it seriously affects the credibility of the witness; and also for the further reason, which was clearly brought out in *Moriarty v. London, Chatham & Dover Railway*, 18 W. R. 625, that all evidence is relevant which goes to prove the manner in which a party has procured his witnesses, as tending to prove an admission by his conduct that his case is bad.

(2.) It further appeared that one of the solicitors had taken a bond in the penal sum of \$20,000 to secure payment of his costs and charges. It seems to be clear that any such arrangement cannot benefit the solicitor. The authorities are uniform that an agreement, by which the attorney would get the client to pay him a larger sum than the Master would allow on taxation, is one which cannot be enforced: *Philly v. Hazle*, 8 C.B.N.S. 647. In that case Erle, J., observed: "Such agreements are void; otherwise, an attorney might hang up in his office a tariff of his own, and claim to bind all his clients by it, as doing business for them on the terms of a special bargain." See also *Re Geddes*, 2 Chan. Cham., p. 447. In *Re Newman*, 30 Beav. 196, the Master of the Rolls held that an agreement between an attorney and an intended client for the payment of a fixed sum for costs to be incurred (i.e. by way of anticipation) was illegal—bad on its face—need not be set aside—was mere waste paper.

(3.) The important constitutional questions, agitated in *Cullen v. Cullen* (see 10 C. L. J. 126), touching the right of the Bishops of the Roman Catholic Church to dispense with banns,